

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE MAY 10, 2016

AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1078

Introduced by Senator Jackson

February 17, 2016

An act to amend ~~Sections 1281.85 and~~ *Section* 1281.9 of, and to add Section 1281.65 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, Jackson. Civil procedure: arbitration.

Existing law governs arbitration in civil proceedings. Under existing law, a neutral arbitrator is defined as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. Existing law requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt as to the proposed neutral arbitrator's impartiality. Existing law requires the disclosure to include, among other things, whether or not the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral with a party to the proceeding, or is participating in, or has participated within the last 2 years in, discussions regarding such prospective employment or service.

This bill, in a consumer arbitration case, would also require the disclosure of any solicitation made within the last 2 years by, or at the direction of, a private arbitration company to a party or lawyer for a party. The bill would only require disclosure of solicitations made after January 1, 2017. *The bill would specify what is, and what is not, a solicitation for purposes of this disclosure.* The bill would prohibit the solicitation of a party or lawyer for a party during the pendency of the arbitration. The bill would also prohibit an arbitrator, from the time of appointment until the conclusion of the arbitration, from entertaining or accepting any offers of employment or offers of new professional relationships, and, in a consumer arbitration case, would prohibit the arbitrator from entertaining or accepting any offers of employment as a dispute resolution neutral in another case from a party or lawyer for a party in the pending ~~arbitration~~. *arbitration, except as provided.*

~~Existing law requires a court to vacate an arbitration award if it determines that certain circumstances exist.~~

~~This bill, in a consumer arbitration case, would authorize a party to recover arbitration proceeding costs from a private arbitration company or arbitrator if the arbitration award is vacated by the court based on a determination that there was corruption in any of the arbitrators, the rights of the party were substantially prejudiced by misconduct of a neutral arbitrator, or the arbitrator making the award either failed to timely disclose a ground for disqualification, as specified, or the arbitrator was subject to disqualification, as specified, but failed to disqualify himself or herself after receiving a timely demand to disqualify because of a violation of specified ethics standards or disclosure requirements. The bill would only allow the recovery of costs after the private arbitration company or arbitrator is provided notice and an opportunity to be heard only on the issue of whether there was a violation of the ethics standards or disclosure requirements. The bill would prohibit the recovery of costs if the arbitration award is vacated solely on the basis of a harmless error.~~

This bill would exempt specified self-regulatory organizations from the application of the bill. *The bill would provide that its provisions are severable.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1281.65 is added to the Code of Civil Procedure, to read:

1281.65. (a) From the time of appointment until the conclusion of the arbitration, an arbitrator shall not entertain or accept either of the following:

(1) Any offers of employment or new professional relationships as a lawyer, expert witness, or consultant from a party or lawyer for a party in the pending arbitration.

(2) In a consumer arbitration case, any offers of employment as a dispute resolution neutral in another case involving a party or lawyer for a party in the pending arbitration unless all parties to the pending arbitration, including the lawyers in the arbitration, have conferred and agreed in writing, before any solicitation of the arbitrator, to allow offers of future employment as a dispute resolution neutral to be made to the arbitrator.

(b) This section does not apply to an arbitration conducted or administered by a self-regulatory organization, as defined by the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a) or regulations adopted under that act. *This section also does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.*

(c) For purposes of this section, “lawyer for a party” has the same definition as that term is defined in Section 1281.9.

~~SEC. 2. Section 1281.85 of the Code of Civil Procedure is amended to read:~~

~~1281.85. (a) Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section. The Judicial Council shall adopt ethics standards for all neutral arbitrators effective July 1, 2002. These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand, but shall not limit, the disclosure and disqualification requirements established by this chapter. The ethics standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity;~~

1 disqualifications, acceptance of gifts, and establishment of future
2 professional relationships.

3 ~~(b) Subdivision (a) does not apply to an arbitration conducted~~
4 ~~pursuant to the terms of a public or private sector collective~~
5 ~~bargaining agreement.~~

6 ~~(c) The ethics requirements and standards of this chapter are~~
7 ~~nonnegotiable and shall not be waived.~~

8 ~~(d) (1) In a consumer arbitration case, if an arbitration award~~
9 ~~is vacated pursuant to paragraph (2), (3), or (6) of subdivision (a)~~
10 ~~of Section 1286.2 because of a violation of the ethics standards~~
11 ~~adopted by the Judicial Council pursuant to this section or a~~
12 ~~violation of the disclosure requirements established by this chapter,~~
13 ~~a party may recover any costs incurred in the arbitration proceeding~~
14 ~~from the private arbitration company or from the arbitrator to~~
15 ~~whom the costs were paid. A recovery of costs from the private~~
16 ~~arbitration company or from the arbitrator is only allowed after~~
17 ~~the private arbitration company or the arbitrator is provided notice~~
18 ~~and an opportunity to be heard only on the issue of whether there~~
19 ~~was a violation of the ethics standards or disclosure requirements.~~
20 ~~A recovery of costs under this paragraph is prohibited if the~~
21 ~~arbitration award is vacated solely on the basis of a harmless error.~~
22 ~~For purposes of this paragraph, “costs” include filing fees,~~
23 ~~administrative costs, arbitrator fees, or any other fees paid to the~~
24 ~~private arbitration company or arbitrator.~~

25 ~~(2) This subdivision does not apply to an arbitration conducted~~
26 ~~or administered by a self-regulatory organization, as defined by~~
27 ~~the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a)~~
28 ~~or regulations adopted under that act.~~

29 ~~SEC. 3.~~

30 *SEC. 2.* Section 1281.9 of the Code of Civil Procedure is
31 amended to read:

32 1281.9. (a) In any arbitration pursuant to an arbitration
33 agreement, when a person is to serve as a neutral arbitrator, the
34 proposed neutral arbitrator shall disclose all matters that could
35 cause a person aware of the facts to reasonably entertain a doubt
36 that the proposed neutral arbitrator would be able to be impartial,
37 including all of the following:

38 (1) The existence of any ground specified in Section 170.1 for
39 disqualification of a judge. For purposes of paragraph (8) of
40 subdivision (a) of Section 170.1, the proposed neutral arbitrator

1 shall disclose whether or not he or she has a current arrangement
2 concerning prospective employment or other compensated service
3 as a dispute resolution neutral or is participating in, or, within the
4 last two years, has participated in, discussions regarding such
5 prospective employment or service with a party to the proceeding.

6 (2) Any matters required to be disclosed by the ethics standards
7 for neutral arbitrators adopted by the Judicial Council pursuant to
8 this chapter.

9 (3) The names of the parties to all prior or pending noncollective
10 bargaining cases in which the proposed neutral arbitrator served
11 or is serving as a party arbitrator for a party to the arbitration
12 proceeding or for a lawyer for a party and the results of each case
13 arbitrated to conclusion, including the date of the arbitration award,
14 identification of the prevailing party, the names of the parties'
15 attorneys, and the amount of monetary damages awarded, if any.
16 In order to preserve confidentiality, it shall be sufficient to give
17 the name of any party who is not a party to the pending arbitration
18 as "claimant" or "respondent" if the party is an individual and not
19 a business or corporate entity.

20 (4) The names of the parties to all prior or pending noncollective
21 bargaining cases involving a party to the arbitration or lawyer for
22 a party for which the proposed neutral arbitrator served or is serving
23 as neutral arbitrator, and the results of each case arbitrated to
24 conclusion, including the date of the arbitration award,
25 identification of the prevailing party, the names of the parties'
26 attorneys and the amount of monetary damages awarded, if any.
27 In order to preserve confidentiality, it shall be sufficient to give
28 the name of any party not a party to the pending arbitration as
29 "claimant" or "respondent" if the party is an individual and not a
30 business or corporate entity.

31 (5) Any attorney-client relationship the proposed neutral
32 arbitrator has or had with a party or lawyer for a party to the
33 arbitration proceeding.

34 (6) Any professional or significant personal relationship the
35 proposed neutral arbitrator or his or her spouse or minor child
36 living in the household has or has had with a party to the arbitration
37 proceeding or lawyer for a party.

38 (7) (A) For a consumer arbitration case, any solicitation made
39 within the last two years by, or at the direction of, the private
40 arbitration company to a party or lawyer for a party to the consumer

1 arbitration. During the pendency of the consumer arbitration, no
2 solicitation shall be made of a party to the arbitration or of a lawyer
3 for a party to the arbitration. Any solicitation made before January
4 1, 2017, is not required to be disclosed pursuant to this paragraph.

5 (B) This paragraph does not apply to an arbitration conducted
6 or administered by a self-regulatory organization, as defined by
7 the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a)
8 or regulations adopted under that act.

9 (C) (i) For purposes of this paragraph, “solicitation” includes
10 ~~all~~ *either* of the following:

11 (I) Private presentations made to a party or lawyer for a party
12 by the private arbitration company or the arbitrator.

13 ~~(H) An oral or written request for arbitration business.~~

14 ~~(HH)~~

15 (II) Oral or written discussions, meetings, or negotiations to
16 designate the private arbitration company or the arbitrator as the
17 arbitration provider or arbitrator for a ~~party~~. *party in specific*
18 *contracts.*

19 (ii) For purposes of this paragraph, “solicitation” does not
20 include any of the following:

21 (I) Advertising directed to the general public.

22 (II) Communications indicating a general willingness to serve
23 as an arbitrator or private arbitration company. *For purposes of*
24 *this subclause, “communications” include, but are not limited to,*
25 *standard educational materials about alternative dispute resolution*
26 *or the provider organization.*

27 (III) Presentations made by the private arbitration company or
28 the arbitrator at a program or seminar held open to the public.

29 (IV) *Responding to inquiries regarding the arbitration*
30 *provider’s costs, rules, procedures, or standards.*

31 (b) Subject only to the disclosure requirements of law, the
32 proposed neutral arbitrator shall disclose all matters required to
33 be disclosed pursuant to this section to all parties in writing within
34 10 calendar days of service of notice of the proposed nomination
35 or appointment.

36 (c) For purposes of this section, “lawyer for a party” includes
37 any lawyer or law firm currently associated in the practice of law
38 with the lawyer hired to represent a party.

39 (d) For purposes of this section, “prior cases” means
40 noncollective bargaining cases in which an arbitration award was

1 rendered within five years before the date of the proposed
2 nomination or appointment.

3 (e) For purposes of this section, “any arbitration” does not
4 include an arbitration conducted pursuant to the terms of a public
5 or private sector collective bargaining agreement.

6 *SEC. 3. The provisions of this bill are severable. If any*
7 *provision of this bill or its application is held invalid, that invalidity*
8 *shall not affect other provisions or applications that can be given*
9 *effect without the invalid provision or application.*